IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 21ST JULY 2006 / 30TH ASHADHA,1928

Crl.MC.No. 1582 of 2005()

SC.646/2004 of ADDL.SESSIONS COURT (ADHOC - I), KASARAGOD

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PETITIONER: ACCUSED:

KRISHNA MANIYANI, S/O.AYYAPPA MANIYANI,
KATTATHADKA HOUSE, P.O. YETHADKA, KASARAGOD.

BY ADV. SRI.I.V.PRAMOD

RESPONDENTS: COMPLAINANT:

THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.P.SAJI.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 24/6/2005, THE COURT ON 21/07/2006, PASSED THE FOLLOWING:

A.K. Basheer, J.

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Crl.M.C. No. 1582 of 2005

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Dated this the 21st day of July , 2006.

O R D E R

(a) Can the driver of a vehicle be charge sheeted and tried for an offence punishable under Section 304 IPC, if his rash or negligent driving has resulted in the death of another person? and

(b) Is the plea of the driver in such a motor accident that he is liable to be charge sheeted and tried only for an offence punishable under Section 304A IPC sustainable?

2. The above questions have come up for consideration in this petition filed by the accused under Section 482 of the Code of Criminal Procedure, in the following facts and circumstances.

3. Kasaragod Police charge sheeted the petitioner alleging commission of offences punishable under Sections 279, 337, 338, 304 (A) and 304 IPC. The version given by the Police goes like this:

4. On November 19, 2002 at about 12.45 PM, the petitioner-accused drove stage carriage bearing registration No. KL 14-C/7739 in a culpably rash and negligent manner at a very high speed; and while he tried to overtake a bus which was going ahead of him, he found another bus coming from the opposite side. Petitioner applied the brake suddenly and swerved the bus in order to avoid collision with the oncoming vehicle. In the process petitioner lost control of his vehicle. A lady passenger in the bus

was thrown out through the window and the bus capsized and plunged over her body resulting in her instantaneous death. Almost all the other passengers in the bus sustained injuries in the accident.

5. The passengers of the bus had stated before the Investigating Officer that the petitioner-accused had been driving the vehicle at a reckless speed right from the beginning. He paid no heed to any of the requests made by the Conductor and the passengers to slow down. The gruesome accident took place at a particular stretch of road on the National Highway, where it ran straight to a distance of 350 metres towards west and 250 meters towards east. The Investigating Officer had laid the charge sheet before the Judicial Magistrate of First Class incorporating Section 304 IPC also, in the light of the material pieces of evidence gathered by him in the course of the investigation.

6. After committal of the case to the Sessions Court, petitioner-accused filed an application under Section 227 of the Code of Criminal Procedure pleading for discharge and/or deletion of the charge under Section 304 IPC. The learned Sessions Judge dismissed the application holding that a prima facie case had been made out to try the petitioner for the offence punishable under Section 304 IPC also. The learned Judge further took the view that " when it was doubtful under which penal section the act would fall", it would be better to frame charges under all the

relevant penal sections, even if those sections could not co-exist. Petitioner-accused has impugned the above order, a copy of which is on record as Annexure II.

7. It is contended on behalf of the petitioner that the learned Sessions Judge was not justified in taking a casual approach in the matter of framing charge. A Criminal Court has to frame charge against the accused only after a proper application of mind. The learned Sessions Judge had dealt with the issue in a cavalier fashion. It is further contended by the learned counsel that the observation by the learned Judge that "when it is doubtful under which penal section the act would fall, it is better to frame charges under all the relevant penal sections even if those sections cannot co-exist", will by itself indicate the casual manner in which the issue was tackled. He submits that in the case of death arising from a motor accident due to rash or negligent driving, the driver of the offending vehicle has to be invariably charge sheeted and tried for the offence punishable under Section 304 A IPC only.

8. In this context it is necessary to take a brief look at the relevant penal provisions which may fall for consideration in this case.

Section 304 A reads thus:

"304A. **Causing death by negligence**:-- whoever causes the death of any person by doing any rash or negligent act <u>not amounting</u>

> to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."
>
> (emphasis supplied)

A perusal of the above provisions shows that any rash or negligent act of an accused resulting in the death of any person shall be punishable with imprisonment of either description for a term which may extend to two years, or with fine, or with both, only if such death does not amount of culpable homicide.

9. "Culpable homicide" is defined in Section 299 which falls under Chapter XVI of the Indian Penal Code. It reads thus:

> "299. Culpable homicide:--Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide"
>
> (emphasis supplied)

Section 304 which prescribes punishment for culpable homicide not amounting to murder is extracted hereunder:

> **"304. Punishment for culpable homicide not amounting to murder:--** Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."
>
> (emphasis supplied)

A perusal of the definition of culpable homicide under Section 299 IPC shows that whoever causes the death of another by doing an act with the knowledge that he is likely by such act, to cause death, commits the offence of culpable homicide. In other words,

mere knowledge of likelihood of causing death of another is sufficient to attract the offence of culpable homicide under Section 299.

10. In the above context, two other questions also may arise for consideration. They are:

> (i) Can knowledge of likelihood referred to in Section 299 and 304 IPC be attributed to a driver who causes an accident by driving a vehicle in a rash or negligent manner and at a reckless speed?
>
> (ii) Is such knowledge of likelihood of causing death a state of mind which cannot be discerned or found out by the Investigating Agency in the course of investigation?

If the answer to question No.2 is in the affirmative, the Investigating Officer may not be justified in charge sheeting the erring driver of a vehicle under Section 304 IPC, even if he drives his vehicle on a public road with a sinister motive to harm another person. But if the answer is in the negative, undoubtedly the driver can be charge sheeted under section 304 IPC.

11. It is contended by the learned counsel that even assuming that there was rashness or negligence on the part of the petitioner while he drove the vehicle on the fateful day, a charge under

Section 304 is not liable to be slapped on him, for the mere fact that a passenger had died in the unfortunate accident. In other words, the contention is that since the death of the passenger did not amount to "culpable homicide" there is no question of trying the petitioner for an offence under Section 304 IPC which deals with punishment for culpable homicide not amounting to murder. Even if a driver indulged in rash or negligent driving, it need not necessarily mean that he had driven the vehicle with the intention of causing death or such bodily injury as was likely to cause death or with the knowledge that he was likely, by such act, to cause death. According to the learned counsel, the phraseology "rash or negligent act" employed in Section 304A by itself would imply that there was no intention to commit culpable homicide. The rash or negligent act should be construed and taken as an act done without being aware or conscious of the consequences or calamities that may follow. The result of a rash or negligent act, though calamitous, will always be unpredictable and unforeseeable. Therefore a driver who drives his vehicle in a rash or negligent manner cannot be charged with an offence which he had not committed. He has to be charge sheeted and tried only for the offence committed by him; namely the offence of causing death by negligence.

12. It is further pointed out by the learned counsel that if a driver is charged with an offence punishable under Section 304A,

he will be liable to be tried by a Judicial Magistrate of First Class, since the offence is punishable only with imprisonment of either description for a term which may extend to two years, or with fine or with both. On the contrary, the offence punishable under section 304 is triable by a court of Sessions, which is likely to be visited with a punishment of imprisonment for life or for a term which may extend to 10 years and with fine.

13. I am afraid the above contentions are totally misconceived. As noticed earlier, "culpable homicide" has three limbs to it.

(a) An act done with the intention of causing death.

(b) an act with the intention of causing such bodily injury as is likely to cause death and

(c) an act that is done with the knowledge that he is likely by such act to cause death.

14. A perusal of the above ingredients contained in Section 299 will undoubtedly show that any person who does an act with the knowledge that he is likely to cause death of another person by such act, can be charge sheeted for an offence of culpable homicide. Similarly, any act done with intention to cause such bodily injury as is likely to cause death will also attract Section 299. If the former part of the definition in Section 299 deals with the intention of the perpetrator of the crime, the latter half speaks of his mental state, namely the knowledge at the back of his mind

that he was likely, by his act, to cause death of another. Similarly, the first part of Section 304 IPC deals with punishment for culpable homicide committed with the intention to cause death, for which the sentence prescribed is imprisonment for life or imprisonment of either description for a term which may extend to ten years and also fine. But the latter part of Section 304 postulates that whoever commits culpable homicide by doing an act which he knew was likely to cause death shall be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both if the act was done with the knowledge that it was likely to cause death. Therefore mere knowledge of likelihood of causing death or of causing bodily injury which would ultimately result in death, would be sufficient to charge sheet the accused for an offence under Section 304 IPC. The intention of law makers is evident from the provisions contained in Section 299 and 304 IPC. Therefore, the investigating agency, in appropriate cases, will be justified to charge sheet the driver of a vehicle under Section 304 IPC, if there are prima facie materials to show that the rashness or negligence shown by him while using the vehicle on the public road was such that he could be imputed with the knowledge that he was likely to cause death of the victim or to cause such bodily injury to him which was likely to cause his death. It is undoubtedly true that such imputation is entirely dependent on the material pieces of

evidence that may be gathered and produced in Court. In that view of the matter it cannot be contended by the accused/driver that he cannot be charge sheeted under Section 304 IPC under any circumstances. The question whether death was caused due to rashness or negligence alone or whether there was any other element of criminal culpability on the part of the accused in refusing to maintain the degree of care and caution expected of him in the given situation, are all matters which will fall within the realm of questions of fact and therefore they are matters for evidence in the trial.

15. Motor accidents all over India and particularly in Kerala are claiming thousands of lives every year. The number of vehicles has risen drastically while the condition of the roads has not shown any marked improvement. The density of vehicles on the roads in Kerala is of course one factor which contributes to the escalation of accidents. As the population grows, the number of commuters will increase. Resultantly, the demand for more vehicles will always be on the rise. Though the roads never expand, their quality of course can be improved, thereby minimising the propensity for accidents.

16. The kind of roads and traffic system that we do have in most parts of India, especially in Kerala, will necessarily mean that drivers have to be extra careful while handling their vehicles. Increase in the number of vehicles and commuters will

understandably put more pressure on the roads. The quality of infrastructure of the transport system has to be updated and enhanced periodically, which in turn will facilitate free and smooth flow of traffic. Even if such improvements are to be made (which may be a distant reality, as far as Kerala is concerned because of its financial crunch), the traffic regulating agencies are left with an unenviable task in their hands. It is in this context that the law enforcing agency has to come out with very stringent measures to curb the tendency of drivers, especially that of public transport vehicles, to toy with their vehicles on public roads.

17. It is a common sight on the roads in the State that buses and other heavy vehicles are driven with such gay abandon and dare devilry. Careless drivers, particularly if they are handling public transport vehicles, are a menace and curse to the public. Such drivers put the life of not only the passengers of such vehicles, but also that of the pedestrians and other commuters to peril. Any driver who takes out his vehicle on to the public road must be imputed with the knowledge that even the slightest element of carelessness or rashness on his part would endanger the life and property of the public. It is all the more so if he happens to be driving a public transport vehicle. He must, therefore, be more careful on the roads for the reasons stated above.

18. The bus drivers in Kerala (without forgetting the infamous "Tipper lorry" drivers) are notorious for their dare devilry and "I don't give a hoot for the traffic rules" attitude. It is said that the employees of buses are apparently driven by the urge to earn a few bucks extra as incentive or commission offered by their masters on the total collection they make in a day. The utterly careless manner in which they handle the vehicles is a terrifying sight. Less said the better about these desperados on the street. Only the law enforcing agencies can save the day for the innocent public, whether they be pedestrians or passengers. The law making authorities must bring in more stringent statutes/regulations to curb the menace.

19. The driver of a public transport or heavy vehicle who causes an accident must face the threat of losing his licence for ever, if it is proved that he is guilty of rash or negligent driving. His licence must inevitably be suspended, if there is prima facie material to show that he was responsible for the accident. Such deterrent steps will undoubtedly have a sobering effect on these erring drivers. With Mobile Courts now being available in almost all cities and towns, it may not be impossible to reach the spot of the accident within no time and record statements of eye witnesses then and there. This may be yet another step in giving more credibility to justice dispensation system in traffic offences. Reference to only some of the areas of concern has been made

because of the anxiety to alert the law makers and law enforcing agencies to undertake an earnest endeavour to put a halt to this kind of "traffic horrors" on the roads in the state.

20. I hasten to add that the above observations may not be treated as an indictment of all drivers of public transport vehicles, heavy vehicles, tipper lorries etc. as a general class. The observations are also not meant to exonerate the drivers of private vehicles like cars, two wheelers etc. But what is intended to convey is only that those drivers who are in charge of pubic transport vehicles carrying passengers, owe an added responsibility to ensure the safety of those travelling in those vehicles in addition to those who are outside. Further, the impact of a collision caused by a heavy vehicle will be more disastrous and dreadful than that is caused by a light vehicle. Suspension of licence of any vehicle is permitted under the Motor Vehicles Act and the Rules in appropriate cases.

21. Learned counsel for the petitioner has invited my attention to a few decisions in support of his contentions, as noticed above. In ***Afrahim Sheikh & Ors. v. State of West Bengal*** (AIR 1964 SC 1263), the appellants-accused were found guilty under Section 304 Part II IPC and they were sentenced to undergo Rigorous Imprisonment for 6 years each. The only point which was urged before the Supreme Court was whether Section 304 could be read in conjunction with Part II Section 304 IPC.

Having gone through the judgment, I do not think that the dictum laid down in the above judgment has any relevance or application in the case on hand.

22. In ***State of Gujarat v. Haidarali Kalubhai (AIR 1976 SC 1012)*** , the question was whether an accused could be convicted under Section 304 Part II IPC, if he had wilfully driven a motor vehicle into the midst of a crowed and thereby caused death of a person. The trial court had convicted the accused under Section 304 Part II and sentenced him to undergo Rigorous Imprisonment for 7 years for causing death of a person lying on a cot. The accused was also convicted under sections 326 and 323 IPC and sentenced accordingly. On appeal to the High Court, the conviction was altered to one under Section 304A IPC only and the accused was sentenced to Rigorous Imprisonment for 18 months and to pay a fine of Rs.5,000/- . While confirming the order of the High Court, their Lordships of the Apex Court held, in the light of the evidence on record, that the accused was not liable to be held guilty of an offence of culpable homicide. Their Lordships noticed that when the speeding truck came in contact with the corner of the steel cot it was thrown over the wooden cot. Resultantly the deceased who was lying on the wooden cot was thrown over and he sustained fatal injuries. This piece of evidence, according to their Lordships, did not reveal the intention of the accused to perpetrate any deliberate act with the requisite

knowledge of committing an offence of culpable homicide.

23. But it is pertinent to note that in the above case, the prosecution had attempted to establish a motive for committing the offence. According to the prosecution, there was enmity between the Sarpanch and the accused and his relation on account of Panchayat elections. But the said theory of motive was not accepted by the trial court or the High Court. It was in the backdrop of the above facts and circumstances that the Supreme Court had held that the narration of the manner in which the accident took place did not reveal any intention on the part of the accused to do any deliberate act by him to commit the offence of culpable homicide. After noticing the above facts and circumstances their Lordships had observed that each case would depend upon the particular facts established against the accused.

24. The other decision relied on by the petitioner is ***Shankar Narayan Bhadolkar v. State of Maharashtra (2005 SCC (Cri) 22)***. The dictum laid down in the above judgment, in my view, has no relevance to the facts of the case on hand.

25. It has to be noticed that the court below had framed charge on the basis of the materials placed by the Investigating Agency before it. The question whether the petitioner is liable to be convicted under section 304 will entirely depend on the evidence that may be adduced by the prosecution. This Court, in my view, will not be justified in quashing the proceedings by

invoking the inherent power under section 482 of the Code in this case.

Crl.M.C fails and it is dismissed.

A.K. Basheer
Judge.

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